

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 ELIZABETH CARLEY,

5 Plaintiff,

6 vs.

7 WARDEN JO GENTRY, *et al.*,

8 Defendants.

2:17-cv-02670-MMD-VCF

ORDER

9 Before the Court is the Plaintiff's Motion to Appoint Expert Witness. (ECF No. 65). Defendants
10 have filed an opposition and plaintiff filed a reply. (ECF No. 71 and 73).

11 Plaintiff requests the appointment of an expert pursuant to Rules 702 and 706 of the Federal Rules
12 of Evidence to conduct an audit of the prison law library at Florence McClure Women's Correctional
13 Center and to "gather. . . privileged documents." (ECF No. 65 at 1-2).

14 **LEGAL STANDARD**

15 The *in forma pauperis* statute, 28 U.S.C. § 1915, does not provide for the appointment of expert
16 witnesses to aid prisoners or other indigent litigants. *Hannah v. United States*, 523 F.3d 597, 601 (5th Cir.
17 2008) (quoting *Pedraza v. Jones*, 71 F.3d 194, 196 (5th Cir.1995)); *see also Faletoyo v. Moya*, 2013 WL
18 524037, at *2 (S.D. Cal. Feb. 12, 2013). Instead, the district court has discretion to appoint an expert
19 pursuant to Rule 706(a) of the Federal Rules of Evidence which reads, in part, "[t]he court may on its own
20 motion or on the motion of any party enter an order to show cause why expert witnesses should not be
21 appointed." *Lopez v. Scribner*, 2007 WL 1215420 (E.D. Cal. Apr. 24, 2007) (*citing* Fed. R. Evid. 706(a);
22 *see also Walker v. American Home Shield Long Term Disability Plan*, 180 F.3d 1065, 1071 (9th
23 Cir.1999)). Appointing expert witnesses under Rule 706 is rare given that the adversary system is usually
24 sufficient to promote accurate fact finding. *See* 29 FED. PRAC. & PROC. EVID. § 6304 (2d ed.) ("[T]he
25 exercise of Rule 706 powers is rare under virtually any circumstances.

1 A Rule 706 expert does not serve as an advocate for any party and each party retains the ability
2 to call its own experts. Fed. R. Evid. 706(e). Rule 706 permits the appointment of an unbiased, neutral
3 expert only if the expert's opinion would promote accurate fact finding and only where an expert would
4 be particularly helpful evaluating complex or confusing evidence, such as scientific, technical, or other
5 specialized knowledge. *Gorton v. Todd*, 793 F. Supp.2d 1171, 1179 (E.D. Cal. June 29, 2011; *see also*
6 *Ledford v. Sullivan*, 105 F.3d 354, 358-59 (7th Cir. 1997). The court should also consider whether (1)
7 appointment of an expert will promote accurate factfinding; (2) testimony from the parties' experts is
8 sufficient to reveal the facts; and (3) the claim raises constitutional concerns. *Gorton*, 793 F Supp. 2d at
9 1171, 1182. A court-appointed expert is entitled to reasonable compensation and, in civil cases, the
10 compensation is paid by the parties in proportion and at such time as the court directs; however, where
11 one party is indigent, the court may apportion all the cost to one side. *O'Neill v. Bannister*, 2012 WL
12 12542743, at *2 (D. Nev. Aug. 29, 2012).

13 The Court further finds that the issues involved in this action are not particularly complex and,
14 therefore, the appointment of an expert to promote accurate factfinding is not necessary. *See Walker v.*
15 *American Home Shield Long Term Disability Plan*, 180 F.3d 1065, 1071 (9th Cir. 1999) (finding that
16 district court decision to appoint independent expert to assist court in evaluating contradictory evidence
17 about elusive disease of unknown origin was appropriate). An expert witness may be appropriate if the
18 evidence to be presented at trial is complex. Fed. R. Evid. 702 ("If scientific, technical, or other
19 specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue,
20 a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto
21 in the form of an opinion or otherwise ..."). Here, the Court finds that the testimony of a neutral expert in
22 this case is not required to "assist the trier of fact to understand the evidence or to determine a fact in
23 issue." Fed. R. Evid. 702(a). This issues in this case are not complex, in which that Plaintiff would require
24 the clarification of scientific, technical or specialized evidence. Plaintiff has been quite articulate in her
25 motions.

1 Plaintiff requests the appointment of an expert pursuant to Rules 702 and 706 of the Federal Rules
2 of Evidence to conduct an audit of the prison law library at Florence McClure Women's Correctional
3 Center and to "gather. . . privileged documents." (ECF No. 65 at 1-2). Plaintiff's concern about obtaining
4 records can likely be addressed through the normal discovery process.

5 Accordingly,

6 IT IS HEREBY ORDERED that Plaintiff's Motion to Appoint Expert Witness (ECF No. 65) is
7 DENIED.

8 IT IS FURTHER ORDERED that the Plaintiff's Motions to file Enlargements of Time to file
9 Reply (ECF No. 67 & 72) are GRANTED.

10 DATED this 10th day of April, 2020.



11 CAM FERENBACH
12 UNITED STATES MAGISTRATE JUDGE
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